

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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BD DEVELOPMENT, LLC.,

Plaintiff,

-against-

Case No.: 2:14-cv-4876 (JS) (AKT)

**REPLY AFFIDAVIT OF  
DOMENICO FLAVONI**

LOCAL 79, LABORERS INTERNATIONAL  
UNION OF NORTH AMERICA,

Defendant.  
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STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF SUFFOLK    )

DOMENICO FLAVONI, being duly sworn, deposes and says:

1. I am a co-owner and President of BD Development LLC (hereinafter "BD"), the Plaintiff in this action.

2. Together with Jimie Deliteris (hereinafter "Deliteris"), my partner – who is also the Vice President and co-owner of BD – I manage all aspects of BD's operations.

3. I submit this reply affidavit in further support of BD's Motion for Summary Judgment seeking judgment as a matter of law against Local 79, Laborers International Union of North America (hereinafter "Defendant" or "Local 79") for violations of the Labor Management Relations Act (hereinafter "LMRA") § 303.

4. In my capacity as co-owner and President of BD, I have personal knowledge of the facts set forth below.

5. In the course of my communications with agents of Local 79, I recorded some of the conversations I had with these agents and representatives of various secondary employers and others involved in such communications by using the “Voice Memos” application on my cellular phone, an iPhone.

6. I previously outlined, in my affidavit dated November 2, 2016, conversations which I personally recorded.

7. Below, I outline the remaining conversations which I also personally recorded.

8. On May 23, 2014, at approximately 10:56 AM, I recorded and participated in a conversation I had with Lucien Zito of Macerich. The file containing the recorded conversation was saved on my iPhone, transferred to my computer, and was ultimately saved as “5232014 105620 AM.m4a.”

9. On June 26, 2014, at approximately 8:03 AM, I recorded and participated in a conversation I had with a representative of AMG. The file containing the recorded conversation was saved on my iPhone, transferred to my computer, and was ultimately saved as “6262014 80317 AM.m4a.”

10. On July 2, 2014, at approximately 9:07 AM, I recorded and participated in a conversation I had with representatives of BD and the Gap regarding, among other things, Local 79’s conduct. The file containing the recorded conversation was saved on my iPhone, transferred to my computer, and was ultimately saved as “722014 90752 AM.m4a.”

11. On July 3, 2014, at approximately 10:45 AM, I recorded and participated in a conversation I had with Mike Labate. The file containing the recorded conversation was saved on my iPhone, transferred to my computer, and was ultimately saved as “732014 104541 AM.m4a.”

12. On July 8, 2014, at approximately 9:40 AM, I recorded and participated in a conversation I had with Mike Labate. The file containing the recorded conversation was saved on my iPhone, transferred to my computer, and was ultimately saved as "782014 94055 AM.m4a."

13. On July 21, 2014, at approximately 10:37 AM, I recorded and participated in a conversation I had with Ken Bluhm, a business agent for the New York City District Council of Carpenters. The file containing the recorded conversation was saved on my iPhone, transferred to my computer, and was ultimately saved as "7212014 103745 AM.m4a."

14. On July 31, 2014, at approximately 9:43 AM, I recorded and participated in a conversation I attempted to have with Lauren Kruse of the Gap. The file containing the recorded conversation was saved on my iPhone, transferred to my computer, and was ultimately saved as "7312014 94323 AM.m4a."

15. On August 12, 2014, at approximately 5:25 PM, I recorded and participated in a conversation I attempted to have with Lauren Kruse of the Gap. The file containing the recorded conversation was saved on my iPhone, transferred to my computer, and was ultimately saved as "8122014 52511 PM.m4a."

16. On August 19, 2014, at approximately 11:24 AM, I recorded and participated in a conversation I had with Christie Johnson from Linear Contracting Inc. The file containing the recorded conversation was saved on my iPhone, transferred to my computer, and was ultimately saved as "8192014 112437 AM.m4a."

17. Ten minutes later, at approximately 11:34 AM, I recorded and participated in a conversation I had with Barry Smith (hereinafter "Smith"), a person who represented himself to be a business agent of Local 79. The file containing the recorded conversation was saved on my iPhone, transferred to my computer, and was ultimately saved as "8192014 113406 AM.m4a."

18. On the same day, at approximately 12:12 PM, I recorded and participated in a conversation I had with Smith. The file containing the recorded conversation was saved on my iPhone, transferred to my computer, and was ultimately saved as "8192014 121211 PM.m4a."

19. On August 20, 2014, at approximately 4:01 PM, I recorded and participated in a conversation I had with Mike O'Neil from Bank of America. The file containing the recorded conversation was saved on my iPhone, transferred to my computer, and was ultimately saved as "8202014 40122 PM.m4a."

20. The same day, at approximately 4:04 PM, I recorded and participated in a conversation I had with Mike O'Neil from Bank of America. The file containing the recorded conversation was saved on my iPhone, transferred to my computer, and was ultimately saved as "8202014 40431 PM.m4a."

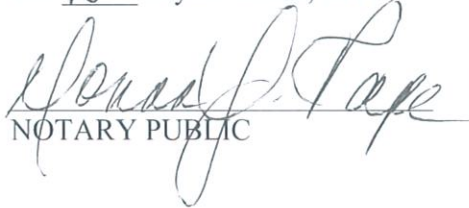
21. On August 26, 2014, at approximately 10:11 AM, I recorded and participated in a conversation I had with Christie Johnson from Linear Contracting Inc. The file containing the recorded conversation was saved on my iPhone, transferred to my computer, and was ultimately saved as "8262014 101144 AM.m4a."

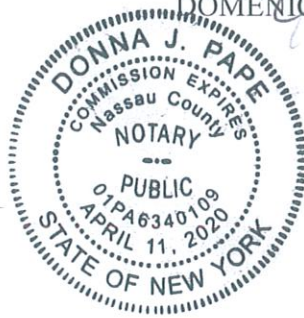
22. On October 10, 2014, at approximately 8:38 AM, I recorded and participated in an in-person conversation I had with representatives of BD, Brookdale Hospital, and Ametis Industries (a contractor signatory to the Carpenters' Union). The file containing the recorded conversation was saved on my iPhone, transferred to my computer, and was ultimately saved as "10102014 83814 AM.m4a."

23. Later that day, at approximately 9:12 AM, I recorded and participated in a continuation of an in-person conversation I had with representatives of BD, Brookdale Hospital, and Ametis Industries. The file containing the recorded conversation was saved on my iPhone, transferred to my computer, and was ultimately saved as "10102014 91227 AM.m4a."

24. I am familiar with the sounds heard as depicted in all of the aforementioned audio recordings, as I personally recorded these conversations and was a party all of these conversations. All of the audio recordings referenced above are a fair, accurate, and true depiction of what occurred at the time I took the audio recordings. Furthermore, I did not in any way alter, edit, modify, or change any of the audio recordings.

Subscribed and sworn to before me  
this 15<sup>th</sup> day of March, 2017

  
NOTARY PUBLIC



  
DOMENICO FLAVONI